

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, MAY 18, 2010

CLERK'S OFFICE

APPLICATION OF

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VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2009-00082

DOCUMENT CONTROL

For Approval to Participate in a  
Renewable Energy Portfolio Standard Program  
Pursuant to Va. Code § 56-585.2

FINAL ORDER

On July 28, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") an Application seeking approval to participate in a renewable energy portfolio standard ("RPS") program ("Application"), pursuant to § 56-585.2 B of the Code of Virginia ("Code").

Section 56-585.2 B of the Code provides that any investor-owned incumbent electric utility may apply to the Commission for approval to participate in an RPS program. The statute requires that the Commission approve such an application if a utility applicant demonstrates that it has a reasonable expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025.

In its Application, Dominion Virginia Power states that the Application represents the Company's initial filing for approval of its RPS Plan. Dominion Virginia Power advises that it is not asking the Commission to decide whether the Company is entitled to cost recovery as permitted by § 56-585.2 of the Code at this time, although it anticipates that it will make cost recovery RPS filings in the future.<sup>1</sup> Dominion Virginia Power also states that it seeks a means to retain flexibility in implementing its plan. The Company proposes "that it be permitted to make

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<sup>1</sup> Dominion Virginia Power's Application at 4.

changes to how it will meet the RPS Goals under the Plan and to provide administrative updates regarding material changes to the Commission Staff."<sup>2</sup>

Section 56-585.2 D of the Code authorizes electric utilities to participate in RPS programs with voluntary RPS Goals commencing in 2010.<sup>3</sup> The Company states that it will use existing renewable sources, develop new renewable energy generation facilities where feasible, and purchase renewable energy certificates ("RECs") as part of its RPS Plan in order to achieve the RPS goals.<sup>4</sup>

The Company also applies the renewable energy produced by contracts with non-utility generators ("NUGs") to meet the RPS Goals.<sup>5</sup> Section 56-585.2 F of the Code states that "[a] utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy resources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible."<sup>6</sup> Dominion Virginia Power advises that it interprets § 56-585.2 F of the Code as "requiring the Company to

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<sup>2</sup> *Id.* at 11.

<sup>3</sup> The RPS Goals are set out in § 56-585.2 D of the Code:

◀ RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total electric energy sold in the base year, and in the year 2016, 7 percent of total electric energy sold in the base year.

RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold in the base year.

RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total electric energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the base year.

<sup>4</sup> Dominion Virginia Power's Application at 4.

<sup>5</sup> *Id.* at 5-6.

<sup>6</sup> Va. Code § 56-585.2 F.

apply renewable energy purchased from NUGs at ratepayer expense to be applied to RPS Goals, with the apparent benefit of no additional cost to ratepayers."<sup>7</sup> However, the Company advises that most of its NUG contracts are silent as to the renewable attributes of generation. The Company takes the position that such contracts include all aspects of that energy, including the renewable attributes.<sup>8</sup> Dominion Virginia Power advises that if the Commission determines that the Company may not apply towards meeting its RPS Goals the renewable energy generated by NUGs, then the Company will need to purchase approximately 5.5 million cumulative additional RECs between 2010 and 2025, with a total ratepayer net present value of \$2.5 million to make up the difference.<sup>9</sup>

On August 26, 2009, the Commission issued an Order for Notice and Comment providing for notice to the public and an opportunity for filing comments and requests for a hearing on Dominion Virginia Power's Application. Pursuant to the August 26, 2009 Order for Notice and Comment, Notices of Intent to Participate were filed by the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); the Virginia Committee for Fair Utility Rates ("VCFUR"); and MeadWestvaco, International Paper, Smurfit-Stone Container, and Georgia Pacific, collectively identified as the VA Pulp & Paper Manufacturers Commenters ("VPPM").

Comments were filed by the Consumer Counsel and VPPM on October 16, 2009. Consumer Counsel supports Commission approval of the Company's participation in an RPS program, but makes recommendations regarding Dominion Virginia Power's procurement of

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<sup>7</sup> Dominion Virginia Power's Application at 7.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

RECs. Among other things, VPPM recommends that for all electricity produced using biomass claimed under the RPS program, the Commission should require: (1) an inventory of the type of biomass fuel and amount of each type of biomass fuel used; and (2) that the inventory information should be documented to identify such biomass as "merchantable or non-merchantable material as required by Section 56-585.2 F and to follow the custody of ownership of the resource."<sup>10</sup> VPPM asserts that the only way for the Commission and rate payers to know whether incentive payments are being awarded for activities sanctioned by the statute, with regard to the use of biomass, is to have sufficiently detailed information on the biomass types and amounts used by the utilities.

On November 20, 2009, the Staff of the State Corporation Commission ("Staff") filed a Report detailing its investigation of the Application and stating its conclusions about the Company's proposal. The Staff notes that § 56-585.1 D of the Code states that "[n]othing in this section shall preclude the Commission from determining, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding . . . ."<sup>11</sup> The Staff recommends that the Commission approve the Company's Application to participate in the voluntary RPS program, because, in Staff's opinion, Dominion Virginia Power has demonstrated that it has a reasonable expectation of reasonably and prudently achieving the RPS Goals.<sup>12</sup> The Staff also notes that Dominion Virginia Power is not seeking cost recovery of its RPS programs at this time. Therefore, the Staff advises that it is not necessary to determine that the ultimate

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<sup>10</sup> VPPM's Oct. 16, 2009 Comments at 2.

<sup>11</sup> Va. Code § 56-585.1 D.

<sup>12</sup> Staff's Nov. 20, 2009 Report at 10.

costs of the Company's RPS programs are reasonable and prudent until actual costs are known and an application for cost recovery is filed.

Regarding Dominion Virginia Power's assertion that the Company would consider calling upon Dominion Resources, Inc.'s ("DRI") renewable energy resources as a backstop to attain the RPS goals in its voluntary RPS program, the Staff notes that the Company did not provide a cost estimate for this potential affiliate transaction. The Staff recommends that the purchase price be set at the lower of market value or cost.<sup>13</sup>

The Staff also raises a concern about the recovery of incremental costs related to new renewable energy facilities pursuant to § 56-585.2 C of the Code. Indeed, the Staff notes that the Integrated Resource Plan ("IRP") filed by Dominion Virginia Power on September 9, 2009, in Case No. PUE-2009-00096 calls for approximately 200 MW of wind energy capacity and 100 MW of biomass energy capacity to be constructed and in-service by 2017; but that these new facilities are not included in Dominion Virginia Power's cost estimates for the RPS plan.<sup>14</sup> The Staff asserts that:

The purpose of the IRP proceeding is to determine the lowest reasonable cost and resource mix to meet the Company's energy needs over time. It could be argued that if the renewable facilities are approved in the IRP proceeding, then the incremental costs of these facilities with regard to meeting the RPS goals would be zero. In Staff's opinion, it would be inappropriate to recover all the construction costs of these potential future renewable facilities through the RPS plan. These renewable facilities will also produce energy and capacity. Only the incremental costs associated with meeting the RPS Goals should be allowed to be recovered through future RPS cost recovery filings. The remainder of the costs of these facilities should be recovered through base rates.<sup>15</sup>

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<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 14.

On October 28, 2009, Dominion Virginia Power filed its Response to the Comments of the Consumer Counsel and VPPM.

On December 4, 2009, Dominion Virginia Power filed its Response to the Staff Report. With respect to the concerns raised by the Staff regarding the recovery of costs under the RPS plan, Dominion Virginia Power asserts in its Comments that the Company has not sought cost recovery for its RPS plan, and argues that therefore, the facts and issues necessary to make such determinations are not before the Commission.<sup>16</sup> The Company requests that the Commission refrain from making a ruling on this issue.<sup>17</sup>

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Application should be granted.

Section 56-585.2 B of the Code directs that the "Commission shall approve such application if the applicant demonstrates that it has a reasonable expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources

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<sup>16</sup> Dominion Virginia Power's Response to Staff Report at 14.

<sup>17</sup> *Id.* Dominion Virginia Power does, however, take issue with the Staff's assertion that the purpose of the RPS proceeding and future RPS cost recovery proceedings is to determine the least cost alternative for meeting the RPS goals. Citing § 56-585.2 F of the Code, the Company advises that the standard involves reasonable cost, which "is not necessarily the same as lowest cost alternative." *Id.* at 13. We note that the actual standard in Subsection F of Va. Code § 56-585.2 for cost recovery of new renewable energy supplies necessary to meet RPS goals is at "reasonable cost" and in a "prudent manner." We do not need to rule at this time on Staff's equation of this standard to a "least cost" renewable standard. However, in future proceedings seeking cost recovery for renewable resources necessary to meet RPS goals, a comparison of the costs of the resources for which cost recovery is requested versus other available resources, both renewable and non-renewable, as well as the impact on ratepayers, which may include whether specific power and capacity are needed, may be relevant in determining reasonableness and prudence. As we stated in our final order in Case No. PUE-2009-00038, "[T]he General Assembly could – but has not – set forth a policy of encouraging renewable energy at *any* price, no matter how burdensome the impact on consumers." *Application of Appalachian Power Co., To revise its fuel factor pursuant to Va. Code § 56-249.6.*, Case No. PUE-2009-00038, Order Establishing Fuel Factor (August 3, 2009) (emphasis in original). Nor has the General Assembly directed that renewable energy be added under *any* set of circumstances.

during calendar year 2025, as provided in subsection D." Based on the information submitted by the Company in this case, we find that the Company has demonstrated that it has a reasonable expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025.

Section 56-585.2 F of the Code states that a "participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B."<sup>18</sup> Any finding of reasonableness and prudence under this subsection is limited to costs and sources specifically before the Commission in this case. Dominion Virginia Power in fact requests that the Commission refrain from making any such ruling because the Company is not seeking cost recovery for its RPS plan. Approval herein does not encompass costs for presently unknown renewable projects or sources, as it is literally impossible to make findings of fact about information that has yet to be submitted to this Commission. Approval herein also does not represent approval of any particular treatment of RECs. Rather, as discussed by the Company, the Commission will subsequently determine - in one or more future cases - the reasonableness of Dominion Virginia Power's future treatment of RECs, along with the ratemaking implications resulting therefrom. In sum, the Commission will review all projects and expenditures and related costs at the appropriate time and only after such review will customers be subject to any appropriate rate adjustments.

With respect to NUGs, the Company has advised that most of its NUG contracts are silent as to the renewable attributes of generation. Dominion Virginia Power correctly points out

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<sup>18</sup> Va. Code § 56-585.2 F.

that § 56-585.2 F of the Code specifically requires a participating utility to apply towards meeting its RPS Goals "any renewable energy from existing renewable energy sources owned by the participating utility *or purchased as allowed by contract* at no additional cost to customers to the extent feasible."<sup>19</sup> We interpret this to mean that if the Company opts to participate in a voluntary RPS program pursuant to § 56-585.2 of the Code, then the Company is required by this statute to: (1) determine the amount of energy derived from renewable sources that it is purchasing through NUG contracts; and (2) apply this amount toward meeting its RPS goals. If the Company asserts that making this determination is not feasible in a particular circumstance, we will examine that circumstance when the Company raises such a concern.

With respect to the 1.5 million ton restriction for tree-based materials contained in § 56-585.2 F of the Code, there are currently two companies participating in RPS programs: Appalachian Power Company ("APCo") and Dominion Virginia Power, following approval of its Application herein. In APCo's 2008 application pursuant to § 56-585.2 of the Code, APCo's approved 2007 jurisdictional base year energy sales, net of nuclear generation, was determined to be 15,276,000 MWh.<sup>20</sup> In its Application in this proceeding, Dominion Virginia Power reports its 2007 jurisdictional base year energy sales as 43,318,649 MWh. Therefore, as long as there are only two utilities participating in RPS programs under § 56-585.2 of the Code, Dominion Virginia Power's pro-rata share of the 1.5 million tons per year is 73.929%, or 1,108,940 tons. Upon approval of applications of other utilities for participation in RPS programs, this annual allocation may change.

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<sup>19</sup> Va. Code § 56-585.2 F (emphasis added).

<sup>20</sup> See *Application of Appalachian Power Company, For Approval to Participate in the Virginia Renewable Energy Portfolio Standard Program*, 2008 S.C.C. Ann. Rept. 466, Final Order (Aug. 11, 2008); Consumer Counsel's May 1, 2008 Comments at Attachment 2 in Case No. PUE-2008-00003.



Finally, although we have found that an evidentiary hearing is not required herein, we note that our approval of the Application does not necessarily serve as precedent for future applications under this statute.

Accordingly, IT IS ORDERED THAT:

(1) Dominion Virginia Power's Application seeking approval to participate in a renewable energy portfolio standard program, pursuant to § 56-585.2 B of the Code, is hereby granted as set forth above.

(2) There being nothing further to come before the Commission in this proceeding, this matter is dismissed and the papers herein placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; Bernard McNamee, Esquire, and Vishwa B. Link, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219; Cliona M. Robb, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219; M. R. Carter, Esquire, and Karen Bell, Esquire, Dominion Resources Services, Inc., Law Department, P.O. Box 26532, Richmond, Virginia 23261; Patrick R. Scanlon, Esquire, Donald J. Sipe, Esquire, and Todd J. Griset, Esquire, Preti, Flaherty, Beliveau & Pachi, P.O. Box 1058, Augusta, Maine 04332-1058; Irene A. Kowalczyk, Esquire, MeadeWestvaco Corporation, 299 Park Avenue, 13th Floor, New York, New York 10171; and the Commission's Office of General Counsel and Divisions of Energy Regulation and Public Utility Accounting.

A True Copy  
Teste:

  
Clerk of the  
State Corporation Commission